Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

1975 No. 72, Original

STATE OF SOUTH DAKOTA, *Plaintiff,*

v.

STATE OF NEBRASKA, *Defenaant.*

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1975

No. _____, Original

STATE OF SOUTH DAKOTA, *Plaintiff,*

v.

STATE OF NEBRASKA, *Defendant.*

MOTION FOR LEAVE TO FILE COMPLAINT

The State of South Dakota, by its Attorney General, requests leave of the Court to file its Complaint against the State of Nebraska submitted herewith.

WILLIAM J. JANKLOW
ATTORNEY GENERAL
State of South Dakota

STATEMENT IN SUPPORT OF MOTION

This is an action by the State of South Dakota against the State of Nebraska proposed to be instituted in this Court under authority of Article III, Section 2, Clause 1, of the Constitution of the United States, and 28 U.S.C. 1251. The purpose of the proposed action is to establish a boundary line between the States of Nebraska and South Dakota south of Rush and/or Elk Island located in the Missouri River about one mile southeast of the City of Yankton, South Dakota. The State of South Dakota contends that the entire island is within South Dakota's borders because it lies north of the main channel of the Missouri River. Act of March 2, 1861, Ch. 86, 12 Statutes at Large 239. In the alternative, the State of South Dakota contends that the boundary line between the two states lies at that point where the accretions of two former islands came into contact, forming Rush and/or Elk Island.

The earliest survey of this region was conducted in 1858, and approved by the Surveyor General's office on October 4, 1859. This survey was conducted from the Nebraska side of the Missouri River, and did not extend further than the south bank of said river. The second general survey was conducted in 1860 from the South Dakota side of said river. Approved by the Surveyor General's office on February 4, 1861, this survey did not measure land formations south of the north bank of said river.

In 1862, a survey was conducted from the Nebraska side of said river which revealed the existence of a small island a short distance from the Nebraska bank. This survey (approved by Surveyor General's office February 18, 1863) identifies said island as Island No. 1 containing 132.60 acres. Said island was described as located and being a part of Sections five (5) and six (6), Township 33, Range 1 East, Nebraska territory.

A subsequent survey triangulation was conducted in 1889 by the United States Army Corp of Engineers. This

triangulation indicates that the main channel of the Missouri River flowed to the South of Island No. 1 (Rush Island) at that early date. A larger island denominated as Elk Island is drawn as existing directly north of Island No. 1 and south of an arm or chute of the Missouri River, in a map published by order of the Corp of Engineers in 1892. Chart No. 18.

Aerial photographs of the region have been taken in the following years by the United States Department of Agriculture: 1937, 1938, 1941, 1951, 1964, 1970, 1971. The State of South Dakota contends that these photographs support the following conclusions:

a) The Island described in the Nebraska survey as Island No. 1, later became known as Rush Island;

b) The waters of the main channel of the Missouri River have flowed to the south of Rush Island from 1937 to the present;

c) A series of Islands developed in the Missouri River north of Rush Island, and north of the main channel of said river. These Islands gradually joined together and became known as Elk Island. Elk Island has always been located north of the main channel of the Missouri River;

d) At some point in time between 1951 and 1964, accretions of Rush and Elk Islands came into contact, resulting in the creation of one Island of approximately 1,000 acres;

e) Elk/Rush Island presently extends along the southern meander lines of Sections 14, 15, 16, 17, Township 93N, Range 55, Yankton County, South Dakota;

f) Elk/Rush Island is within the boundaries of the State of South Dakota.

The State of Nebraska, it is believed, may contend that the presently existing Island is the result of accretions to Rush Island (Island No. 1). That an avulsion occurred in the Missouri River at some time in the past, switching the main channel of said river from the north side of said Island to the south side. That inhabitants, possessors, owners of Rush/Elk Island have paid taxes to the County of Cedar, State of Nebraska, for a considerable period of time.

In addition, the State of South Dakota contends that several children who have resided upon Elk/Rush Island, were educated in the Yankton, South Dakota public school system during their years of residence upon said Island.

On October 22, 1974, the State of South Dakota commenced a quiet title action in South Dakota State Circuit Court for that portion of Rush/Elk Island located north of that hypothetical line representing the point where accretions between former Elk and Rush Islands came into contact. For jurisdictional reasons, that quiet title action must be held in abeyance until the boundary issue raised by this Motion and Complaint is resolved.

WHEREFORE, the State of South Dakota requests this Court to grant leave to file the Complaint submitted herewith.

Dated this day of May, 1976.

WILLIAM J. JANKLOW
ATTORNEY GENERAL
State of South Dakota

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1975

No. , Original

STATE OF SOUTH DAKOTA, *Plaintiff*,

v

STATE OF NEBRASKA, *Defendant*.

COMPLAINT

The State of South Dakota, by its Attorney General, brings this suit against the State of Nebraska, and for its claim for relief states:

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 1, of the Constitution of the United States, and 28 U.S.C. § 1251.

II

The Plaintiff claims that the following described real estate lies within the boundaries/borders of The State of South Dakota;

a. The real estate which is the subject of this action involves an island located in the Missouri River and commonly referred to as Elk and Rush Islands. In general terms, Elk and Rush Islands and the

accretions thereto, can be described as beginning approximately 1/8 of a mile east of the southeast corner of Outlet Lot 97 in Section 18 in the City of Yankton, South Dakota, and continuing east for approximately (2.8) two point eight miles. This island extends along the Missouri River bank close to and south of the meander lines of Sections 14, 15, 16, 17, Township 93N, Range 55, Yankton County, South Dakota.

The northern boundary of Elk Island is a small branch channel of the Missouri River known as the "North Arm," "Upper Arm" or "Chute" of the Missouri River. This arm of the Missouri River is presently in part or totally blocked by the Yankton city dump.

Elk Island is north of Rush Island. Both islands have always been north of Sections 7, 8 and 9 in Township 33, Range 1 East, Cedar County, Nebraska. Accretions have formed to both islands. A former channel of water separating the two islands is now dry, and the accretions to both islands have met. This line has never been the subject of a survey.

The extreme eastern and western points of Elk and Rush Islands are bounded by the Missouri River and the South Dakota bank (not boundary) of the Missouri River.

Elk Island and Rush Island are now joined together by the accretions and the dry channel. Elk Island and Rush Island and the accretion to the respective islands now totals approximately 1,000 acres.

Elk and Rush Islands are located north of the main channel of the Missour River.

III

The Defendant State of Nebraska contends the above described real estate lies within the boundaries/borders of the State of Nebraska.

IV

That the contentions of the Defendant are erroneous, and have no basis in law or fact. That the Plaintiff's claim is based upon the correct law and facts.

V

That the Defendant's claims have caused and will continue to cause injury to the Plaintiff for these reasons:

a) The Plaintiff has instituted in one of its Circuit Courts, an action to quiet title to a considerable portion of the above described real estate. If the contentions of the Defendant are meritorious, the jurisdiction of this Circuit Court to decide the issues raised by the quiet title action, would be ousted. Accordingly, the Defendant's contentions are causing delay and uncertainty in these proceedings.

b) The Defendant has collected real estate taxes levied against the above described real estate for a considerable number of years. They intend to continue such practice in the foreseeable future. This action of the Defendant has resulted in a considerable loss of revenue for the Plaintiff.

c) The Defendant's claim has caused confusion among various state and local agencies and subdivisions, as to whether said real estate is within Nebraska or South Dakota for administrative purposes.

WHEREFORE, Plaintiff prays:

1. That a decree be entered by this court declaring that the above described real estate is located within the boundaries/borders of the State of South Dakota.

2. That this Court enjoin the Defendant from ever asserting any right, title, or interest in or to said real estate or any part therefore.

3. That the Court enjoin the Defendant from ever levying or collecting real estate taxes upon the above described real estate.

4. That the Plaintiff recover with interest, the revenue collected by the Defendant in the past years in the form of real estate taxes.

5. That the Plaintiff recover its costs and disbursements.

6. For such other relief as this Court may deen equitable under the circumstances.

Dated this_____ day of May, 1976.

WILLIAM J. JANKLOW
ATTORNEY GENERAL
State of South Dakota

CERTIFICATE OF SERVICE

Service of a Motion for Leave to File a Complaint, and Complaint, was made this day of May, 1976, by despositing the same in a United States mailbox, with airmail postage prepaid, addressed to the following individuals:

Paul Douglas ATTORNEY GENERAL State Capitol Lincoln, Nebraska	J. James Exon GOVERNOR State Capitol Lincoln, Nebraska

In addition, I hereby certify that all parties required to be served have been served.

Dated this day of May, 1976.

WILLIAM J. JANKLOW
ATTORNEY GENERAL
State of South Dakota